

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF OHIO  
3 WESTERN DIVISION

3 KAM DEVELOPMENT, LLC Case No. 20CV2024

4 Plaintiff, October 8, 2020

5 v Toledo, Ohio

6 MARCO'S FRANCHISING, LLC

7 Defendant.

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9 VOLUME 3 of 4  
10 TRANSCRIPT OF EXCERPT OF EVIDENTIARY HEARING, VIA ZOOM  
11 BEFORE THE HONORABLE JEFFREY J. HELMICK  
12 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 On Behalf of the Plaintiffs:

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1           THE COURT: Okay, counsel, thank you for all  
2 assembling again for resumption of the hearing.

3           In the first instance I want to thank Mr. Blum  
4 because I know that he had another hearing this morning  
5 that he had to extricate himself from, and was apparently  
6 successful in doing so, pretty darn on time, and I don't  
7 know that that was easy, but it's done, and I appreciate  
8 that.

9           We got a little bit later start than that,  
10 though, than I had anticipated because our court reporter  
11 has not joined us, and, frankly, I'm not -- I'm not angry,  
12 but I am concerned. And so I have pulled Angela Nixon,  
13 another court reporter, who is excellent and very  
14 experienced, to help us out today. However, she has been  
15 engaged in a trial with my colleague, Judge Zouhary. The  
16 jury is out right now, literally, on the case, and so she  
17 may get pulled away at some point if there is a question or  
18 a verdict at some point. And if that happens, we'll have  
19 to take a break for that proceeding. So I apologize for  
20 that. We reached out to the Cleveland office, kind of our  
21 home office, mother ship, they just don't have anyone  
22 available due to dockets there at the moment, so Angela's  
23 more than capable, but please be understanding that she  
24 doesn't know our cast of characters as well as Stacey does  
25 because she's been the court reporter thus far, and know

1     that we might have to have an interruption, depending on  
2     what happens.

3             So with that, my thanks to all for assembling.  
4     My thanks to you for your patience, my thanks to Mr. Blum  
5     for extricating himself, again, from whatever that was.

6             When we left off, of course, Mr. Lombardi was on  
7     direct examination with Mr. Blum for purposes of today's  
8     hearing. It's my intent to conclude this hearing today by  
9     our hard stop with Mr. Kline, as I indicated previously  
10    during our hearing.

11            Are there any preliminary matters for my  
12    attention or our discussion before we get started?  
13    Mr. Davis or Mr. Kline, anything on the plaintiff's side?

14            MR. DAVIS: Nothing for plaintiff, Your Honor.  
15    Good morning.

16            THE COURT: Thank you. Mr. Blum, I know you were  
17    kind of rushing, at least virtually, from one hearing or  
18    another. Have you had a moment to compose things for  
19    today's hearing or resumption of today's hearing?

20            MR. BLUM: I have, Your Honor. Thank you.

21            THE COURT: Very good. Without further ado, why  
22    don't we have Mr. Blum resume his direct examination of  
23    Mr. Lombardi.

24            Mr. Lombardi, welcome back. And I'll just remind  
25    you, as I do all witnesses, you are still under oath. I do

1     that every time we have a break, or at least a try to.

2             With that, we'll turn things over to Mr. Blum.

3             MR. LOMBARDI: Thank you. Good morning, Judge.

4             MR. BLUM: Thank you, Your Honor. There's one  
5     housekeeping thing before we start with Mr. Lombardi. I  
6     would like to just formally move into evidence certain  
7     exhibits that we have established the foundation for,  
8     either through Mr. Hunter, and I don't think -- which is  
9     our Exhibit 5, which is the Consent to Transfer that  
10    Mr. Hunter talked about and identified he and his father's  
11    signature on; Exhibit 7, which is the Notice of Concern  
12    letter that was sent to the Hunters; Exhibit 8, which  
13    was -- oh, wait, Exhibit 8, I believe that 2-26-19, is  
14    that -- Mr. Davis, you already have that as your exhibit,  
15    Mr. Libardi's February 26th, 19 -- I don't want to put it  
16    in -- Exhibit 8, which is the -- Mr. Libardi's  
17    February 26th, 2019 letter to Mr. Hunter. That may be a  
18    plaintiff's exhibit already. Exhibits 13 to 16, which are  
19    the Notices of Deficiencies, the July 24 and the July 31  
20    letters that went through with Mr. Hunter; Exhibit 25,  
21    which is the December 20 letter from Mr. Libardi to  
22    Mr. Hunter about the Charlotte market and the development  
23    which we talked about with Mr. Hunter; and also Exhibit 29,  
24    which is the email exchange between Mr. Hunter and  
25    Mr. Stilwell that Mr. Hunter identified on May 1st, 2019,

1     so just to formally get those into the record. And they're  
2     not duplicate so -- unless, perhaps, Exhibit 8 is.

3             THE COURT: Mr. Klein, Mr. Davis, any thoughts on  
4     those as identified?

5             MR. DAVIS: No, Your Honor, just any objections  
6     that we would have made. I don't want to hold things up.  
7     He went through them very quickly, and the way they were  
8     supplied I can't just pull up each individual exhibit, but  
9     pending any objections that were made on the record at the  
10    time they were introduced, we have no objection.

11            THE COURT: Okay. I'm not sure there were any  
12    except, perhaps, your continuing objection with regard to  
13    the relevance of certain lines of testimony, certain  
14    exhibits. I'm not even sure that applies to those exhibits  
15    to be perfectly honest with you.

16            MR. DAVIS: I'm not sure it does either so we  
17    have no objections.

18            THE COURT: Those will be admitted. Mr. Blum?

19                    CONTINUED DIRECT EXAMINATION

20    BY MR. BLUM:

21    Q.            All right. Good morning, Mr. Libardi.

22    A.            Good morning, Mr. Blum.

23    Q.            All right. Sir --

24            MR. DAVIS: Before Mr. Blum begins, Your Honor,  
25    can you just remind the witness that he's still under oath?

1 THE COURT: I already have, counsel.

2 MR. DAVIS: I apologize.

3 THE COURT: I did at the outset, but that's fine.

4 BY MR. BLUM:

5 Q. Okay. Mr. Libardi, can you -- can you tell The  
6 Court the -- what the role is, or the -- I guess what the  
7 role of an area representative is in the Marcos system,  
8 sir?

9 A. Yes, I'll summarize it. It's -- it's articulated  
10 in writing in the A.R. Manual very clearly, but, generally,  
11 they are a liaison for Marcos Franchising to all  
12 prospective franchisees and operational franchisees in the  
13 system.

14 Q. Okay. And -- and can you -- and what does it  
15 mean for them to be a liaison for Marcos Franchising LLC?

16 A. Well, again, they're responsible for all  
17 communications to franchisees, again, both prospective and  
18 operational. They're -- they're required to provide the  
19 services as outlined in the Area Rep Manual and Operations  
20 Manual, and they're -- they're required to do all the  
21 recruitment and communication and vetting of any  
22 prospective franchisees as well.

23 Q. Okay.

24 A. It's a very brief summary of that.

25 Q. Are there particular -- other particular skills

1 or competencies that you feel are necessary for a person  
2 who's serving in an area representative role?

3 A. Yes.

4 Q. And what are those, sir, generally?

5 A. Well, leadership is a required skill, strong  
6 communications skills, both oral and written are required.

7 A certification and understanding of the rules and  
8 franchise sales, strong understanding of construction  
9 development and site selection of real estate, and a very  
10 strong understanding of operational systems procedures and  
11 how to, again, from a leadership perspective, coach and  
12 influence franchisees and their employees to maintain  
13 company standards.

14 Q. Okay. Is -- is local knowledge important to the  
15 A.R. role?

16 A. Critically important to the A.R. role.

17 Q. And why is that, sir?

18 A. Well, again, as part of the development  
19 responsibility, you have to have intimate knowledge of  
20 populations, densities, the types of populations that are  
21 in play, understanding the importance of location and real  
22 estate and -- and generally where the hot spots are to put  
23 a Marcos Pizza. And it's that local knowledge, the -- that  
24 we rely on to ensure that the right locations are being  
25 selected and vetted correctly.



1 Q. Okay. And does someone -- to become an area  
2 representative, or even through an entity like the  
3 operating partner, are they required to go through various  
4 trainings in the Marcos system?

5 A. They are, yes.

6 Q. And is it -- take for the Hunters, if the Hunters  
7 decided that they wanted to sell their business, could they  
8 just sell it to anyone, or do they have to have Marcos'  
9 approval?

10 A. They need Marcos' approval.

11 Q. Why is that, sir?

12 A. Again, it is such a highly-skilled position that  
13 not anyone can do it, and we wouldn't just allow anyone to  
14 do it. We would want to vet that individual to ensure that  
15 they would maintain the standards of the area  
16 representative role.

17 Q. And, in fact, the requirement the -- is the  
18 requirement of Marcos' approval for any transfer by owners  
19 of an A.R. entity, is that set forth in the A.R. agreement?

20 A. It is.

21 Q. And I think we said this before, the role -- or  
22 the activities that an A.R. performs in its territory, if  
23 there is no -- if there was no A.R. in place, who would  
24 perform those functions?

25 A. Again, we have that example in realtime. We have

1 Marcos Franchising employees performing those same  
2 functions in non-area representative territories.

3 Q. You made reference to the A.R. Manual.

4 A. Yes, sir.

5 Q. And what is the A.R. Manual, sir?

6 A. It is the operating manual for area  
7 representatives, to give them guidance in terms of how to  
8 execute their role.

9 Q. Okay. And very briefly, how is the A.R. role  
10 different than, sort of, a franchisees role in a market?

11 A. Well, a franchisee operates a Marcos franchise,  
12 and they exclusively are operating a single unit and  
13 selling pizzas, if you will, to the -- to their customers.  
14 Area reps sell franchises to prospective franchise  
15 candidates, and, again, they develop real estate, and they  
16 have oversight of franchisees to ensure our compliance and  
17 standards are met of the franchise locations, so very  
18 different. They sell franchises, franchisees sell pizza.

19 Q. Okay. All right, sir.

20 THE COURT: Mr. Blum, while you're taking a brief  
21 pause, may I interrupt? Stacey has been able to join us.  
22 There was some confusion about scheduling today. All is  
23 well with the world. But I'd like to release Angela, if I  
24 may, assuming that Stacey's ready to take over. This  
25 should be fairly seamless.

1           Stacey, are you good to go?

2           MS. KIPROTICH: Yes, I apologize for the  
3 confusion in the time, Judge.

4           THE COURT: It's okay. Not to worry. We were  
5 just worried about you.

6                                 - - -

7                                 C E R T I F I C A T E

8

9           I certify that the foregoing is a correct transcript  
10 from the record of proceedings in the above-entitled matter.

11

12   s:/Angela D. Nixon                         July 2, 2021

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14   Angela D. Nixon, RMR, CRR                 Date

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